

# Who Cares if the Patent System is Broken? Making Lemonade from the Patent Office's Lemons

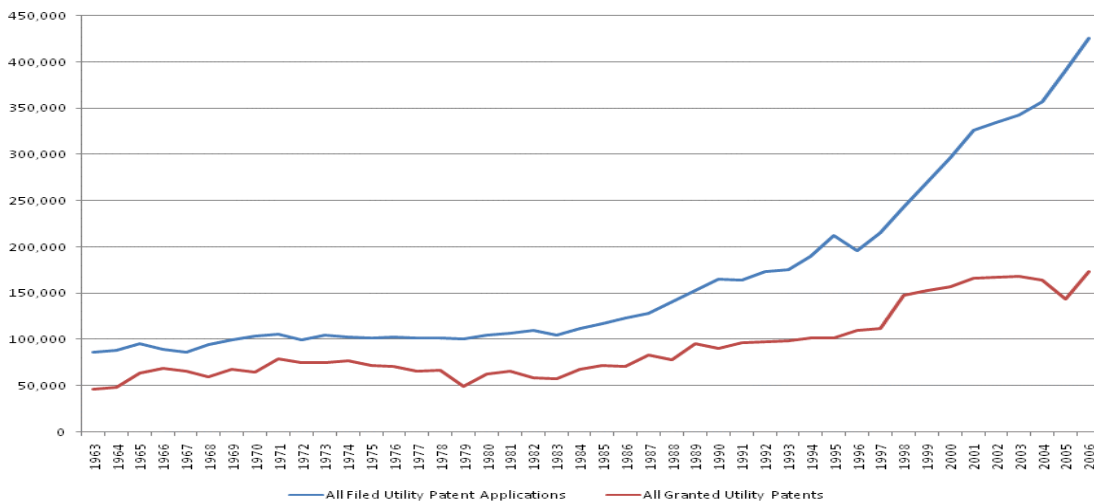


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Much has been written in recent years about how the U.S. patent system is supposedly "broken." (For a good summary of the arguments regarding the problems with U.S. patent system check here: [http://www.news.com/Fixing-a-broken-patent-system/2010-1014\\_3-6212615.html](http://www.news.com/Fixing-a-broken-patent-system/2010-1014_3-6212615.html)). As shown in the below graph (prepared from published US Patent Office data), patent filings have increased about 4 fold in the last 15 or so years. Notwithstanding this substantial increase in filings, patent issuance numbers have lagged behind substantially. Even to the "mathematically challenged," this disparity between filed applications and issued patents signals a huge disconnect between the expectations of patent filers and the reality of a patent application being approved by the U.S. Patent Office.

## Patents Filed and Issued 1963-2006

Prepared from US Patent Office Data



Is the patent system broken? As a practicing patent attorney in a respected intellectual property boutique and as an in-house counsel for a multi-national corporation, I have spent many years in the trenches working to prepare and file U.S. and foreign patent applications for large and small companies of varying levels of sophistication. From my experiences, there is no doubt that there are fundamental problems with the U.S. patent system, as well as the patent systems of other countries. As but one example, I frequently experienced frustration dealing with patent examiners who clearly did not understand the basic rules of patentability, even when these rules are clearly spelled out for all to see in their manual. In recent years, it started to seem that I was dealing with the "no patent office," instead of the Patent Office.

*This article is not about the problems with the U.S. patent system, however.*

The reality is that the U.S. patent system is what it is, and your company cannot wait until it is fixed to jump into the patent game. As with many things in life, if you wait for perfection, you may end up waiting forever. Put another way, as a leading business strategist, you understand that there must be a way to "make lemonade from the Patent Office's lemons."

To this end, now that I am no longer engaged in a daily "foxhole fight" with patent examiners about the merits of my clients' inventions, I can look at the graph below and see opportunity, instead of feeling despair over the probability that I will be in a continued fight with uninformed examiners in the Patent Office for years to come. The opportunity I see relates to the competitive information embedded in the masses of patent filings that are available for review by the public. This information has only been available in significant volume for the 5-7 years, so methods of evaluating and capitalizing on patent filing information by businesses are still evolving. Nonetheless, smart business people are currently and will increasingly utilize this information, in the form of patent analytics, to inform and improve their business decisions.

Certainly, I do not (and cannot) argue that patent analytics are a panacea for the ills of business. But, in today's fast-moving, global business environment, it cannot be controversial to contend that business intelligence is a critical need. Patent information collected and analyzed in the correct business context can provide a valuable addition to a company's arsenal of business tools. Patent information can illuminate what products and technologies your competitors seek to exclude your company from making, using or selling by obtaining patent protection in that

space. Indeed, by definition, what your competitor seeks to keep your company from doing is critical competitive information that should be deployed in your company's business decisions. Your company also needs to know whether your current or future patent spend is directed toward maximizing payback in your corporate innovation investment. Patent information collected in the right way—that is, collected in a manner that generates actionable business insights—can provide a relatively low cost way to obtain this critical business information.

So, viewed from a different perspective, the graph above can be good news for your company. Companies that recognize and act on the information available from mass of patent filings will gain competitive advantage that is invaluable in today's business environment.